IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Misc. Stay Application No.3169/2001

In

S.B. Civil Second Appeal No.583 Of 2001.

Mahavir Prasad Versus Moti Singh (since deceased) through his LRS Ramesh Singh & Others.

Date Of Order ::: 14.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. Rajvir Sharma, Counsel for defendant-appellant.
Mr. Arvind Bhardwaj, Counsel for plaintiff-respondents

By the Court :

Heard learned counsel for both the parties on the stay application.

Learned counsel for the defendant-appellant submits that the appeal has already been admitted, therefore, the eviction decree passed, against the defendant-appellant, by both the Courts below, be stayed, whereas, the learned counsel for the plaintiff-respondents submits that both the Courts below have

decreed the suit of eviction on the ground of personal bona-fide necessity, therefore, the stay application be dismissed or in case any interim stay order, in favour of the defendant-appellant, is passed then at least the mesne profit as per prevalent market rate of rent of the property, in dispute be fixed in favour of the plaintiff-respondents during the pendency of this second appeal.

Learned counsel for the defendant-appellant admits that at present the prevalent market rate of the monthly rent of the disputed shop is approximately Rs.400/-, whereas the learned counsel for the plaintiff-respondents submits that at present the prevalent market rate of the monthly rent of the disputed room is approximately Rs.600/-. The room was let out in the year, 1989 at the rate of Rs.70/- per month.

The Hon'ble Supreme Court in the case of **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.,** (2005) 1 SCC 705, considered the jurisdiction of the appellate Court while passing order of stay under Order 41 Rule 5 of the C.P.C., and held that the appellate court has jurisdiction to put the applicant under Order

41 Rule 5 of the C.P.C., on such reasonable terms as would, in its opinion, reasonable compensate the decree-holder for loss occasioned by delay in execution of the decree by grant of stay order, while passing the stay order in his favour, in the event of the appeal being dismissed.

The Apex Court in the above referred case held as under :

> “19. To sum up, our conclusions are :
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> 1. While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would, in its opinion, reasonable compensate the decree-holder for loss occasioned by delay in execution of the decree by grant of stay order, while passing the stay order in his favour, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.
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> 2. In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With

effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

3. The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date".

The Hon'ble Supreme Court again in **Anderson Wright & Company Vs. Amar Nath Roy,** 2005 DNJ (SC) 562, while considering its earlier judgment in Atma Ram Properties (P) Limited's case (Supra) reiterated the same proposition of law.

The above referred Atma Ram Properties (P) Limited's case (supra) has further been followed by three-Judges Bench of the Hon'ble Apex Court in the case of **Achal Misra Vs. Rama Shanker Singh & Others** (2005) 5 SCC 531 and **Crompton Greaves Limited Vs. State of Maharashtra** (2005) 11 SCC 547.

This Court in **Mandan Bansal Vs. Ramnarayan**

Sharma, reported in R.L.R. 2006 (1) 733, considered the similar point and observed as under :

> "...the criteria for admission of the appeal are altogether different than what adopted at the time of hearing of the appeal for final disposal. Even if the appeal is admitted by the first appellate Court being a statutory appeal or second appeal as substantial question of law arises then it does not mean that it will be allowed finally. Once appeal is admitted then it is commonly known, that it goes for hearing in due course and due to long list of pending old appeals, it takes quite considerable long time in its final disposal. In such circumstances a decree holder is not only deprived of getting the possession of the rented premises but also deprived of the monthly rent or the mesne profit or compensation for use and occupation of the rented premises as the market value of the shop or the prevalent rent of the premises. The Order 41 Rule 5 of the CPC gives jurisdiction to the appellate Court to pass interim stay staying the execution of the decree but the interim stay order is required to be passed reasonably and while doing so the interest of decree-holder is also required to be protected."

After considering the submissions of learned counsel for both the parties, I am of the view that once the second appeal is admitted, the eviction decree

should be stayed and accordingly I stay the decree of eviction passed against the defendant-appellant by both the Courts below, during the pendency of this second appeal, on the following terms and conditions;-

> 1. That the defendant-appellant shall pay/deposit the arrears of monthly mesne profit till 31st of October 2006, as per direction of the Courts below within a period of one month and shall further continue to pay/deposit the monthly mesne profit at the rate of Rs.400/- (Rupees four hundred only) per month, with effect from 1st of November 2006 by 15th day of each succeeding month, in the bank account of the plaintiff-respondent, the details of which will be furnished by the plaintiff-respondents within a period of two weeks to the defendant-appellant or his counsel. In case the details of the bank account are not furnished, then the defendant-appellants may deposit the amount, in question, in the Lower Court itself.

It is made clear that in case all the arrears of mesne profit, as per direction of the Courts below,

are not deposited within a period of one month and the future mesne profit, as directed above, is not deposited with effect from 01st of November 2006, for consecutive two months, then it will be open for the plaintiff-respondents to get the decree, passed in their favour by the Courts below, executed even during the pendency of this second appeal.

The stay application accordingly stands disposed of.

(Narendra Kumar Jain) J.

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